

IT 00-19

Tax Type: Income Tax

Issue: Audit Methodologies and/or Other Computational Issues

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
ADMINISTRATIVE HEARINGS DIVISION
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,**

v.

XYZ INSURANCE CO., et al.

Taxpayer

**No.
FEIN:**

**Christine O'Donoghue
Administrative Law Judge**

**RECOMMENDATION FOR DISPOSITION REGARDING THE PARTIES'
CROSS-MOTIONS FOR SUMMARY JUDGMENT**

This matter arose pursuant to XYZ Insurance Co.'s, *et. al.* ("taxpayer") timely protest of the Notices of Denial that the Illinois Department of Revenue ("Department") issued for the 1981, 1982 and 1983 tax years.

The parties have filed Cross-Motions for Summary Judgment on the sole issue of whether the Department correctly calculated the interest on taxpayer's overpayment pursuant to Ill. Rev. Stat. 1991, ch. 120, Par. 9-909(c)¹ and 86 Ill. Adm. Code Ch. I, Sec. 100.9110². After reviewing the parties' motions, the exhibits attached thereto, and memoranda filed regarding the motions it is my recommendation that summary judgment

¹ Now 35 ILCS 5/909(c) which applies the Uniform Penalty and Interest Act, 35 ILCS 735/3-2 for years on or after 1/1/94.

² Now known as 86 Ill. Adm. Code Ch. I, Sec. 100.9400(d)(A)(1).

be entered for the Department and the Taxpayer's Cross-Motion for Summary Judgment be denied.

FACTS NOT IN DISPUTE³:

1. On January 9, 1985, The XYZ Corporation and nine related companies filed claims for refund for 1983. Stip. ¶1.
2. On September 6, 1989, the Department issued Notices of Deficiency, partial or entire claim denials and notifications of overassessments with claim invitations. These were issued to twelve affiliates for 1981 through 1983. Stip. ¶ 2.
3. After settlement negotiations, Taxpayer signed IL-870s on February 23, 1993, and returned them to the Department on March 3, 1993. Stip. ¶ 3.
4. On July 27, 1993, the Department requested that The XYZ Corporation withdraw the claim for refund for 1983 dated January 9, 1985, and that Taxpayers authorize an offset of the underpayments and overpayments set forth on the IL-870s dated February 23, 1993. Stip. ¶ 4.
5. By letter dated April 14, 1994, The XYZ Corporation withdrew the 1983 claim for refund dated January 9, 1983, and Taxpayers authorized the Department to offset the underpayments and overpayments reflected on the IL-870s dated February 23, 1993. Stip. ¶ 5.
6. Pursuant to a Notice and Demand for Tax dated July 10, 1998, demand for \$188,107 was made upon The XYZ Insurance Company of Illinois. In this Notice and Demand for Tax, the underpayments and overpayments for the

³ Unless otherwise indicated the following facts are taken from the parties' Stipulation of Facts. Paragraph numbers refer to the numbered paragraphs of that document.

years 1981-1983 were offset as authorized in Taxpayers' letter of April 14, 1994. Stip. ¶ 6.

7. The Notice and Demand for Tax dated July 10, 1998 reflects interest on overpayments with respect to eleven companies including, The XYZ Insurance Company (IC), The XYZ Indemnity Company (INDY), XYZ Fire Insurance Company (C.O.) and The XYZ Indemnity Company of XYZ, USA (RI) (collectively the "Overpayment Companies"). Stip. ¶ 7; Taxpayer's Ex. No. 5.
8. The overpayment interest on the July 10, 1998 Notice and Demand was calculated to April 14, 1994. The amount of overpayment interest for the Overpayment Companies is \$183,095. Stip. ¶ 8; Stip. Ex. No. 4.
9. The interest on the underpayments shown on the Notice and Demand was calculated through March 25, 1993. Stip. Ex. Nos. 7 & 4.
10. Payment of the \$188,107 was made by Taxpayers on August 7, 1998. Stip. ¶ 13. On August 7, 1998 and September 1, 1998, claims for refund requesting additional interest for the Overpayment Companies were filed. The total additional interest claimed by the Overpayment Companies is \$68,254. Stip. ¶ 12. The XYZ Insurance Company of Illinois also filed a claim for refund in the amount of \$68,254 on August 7, 1998 and September 1, 1998 to protect any possible reduction to its interest claims. Stip. ¶ 14.
11. The companies and the amounts of additional overpayment interest at issue are as follows:

<u>Company</u>	<u>1982</u>	<u>1983</u>	<u>Total</u>
The XYZ Insur. Co.	\$55,179	\$5973	\$61,152

Fein:

The XYZ Indemnity	\$ 3,736	715	4,451
Fein:			

XYZ Fire Insur. Co.	\$ 1,501	109	1,610
Fein:			

The XYZ Indemnity Co.	<u>\$ 1002</u>	<u>39</u>	<u>1,041</u>
Fein:			

Total			<u>\$68,254</u>
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11. The Department denied the Claims for Refund on September 14, 1998. Stip.

Ex. No. 18. Taxpayer protested the Notice of Denial on November 11, 1998.

Stip. Ex. No. 19.

CONCLUSIONS OF LAW:

A motion for summary judgment is appropriate where the pleadings, affidavits, and other documents on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c); People ex rel. Department of Revenue v. National Liquors Empire, Inc., 157 Ill. App. 3d 434 (4th Dist. 1987). Summary judgment is also appropriate when the parties agree on the facts but dispute the correct construction of the applicable statute. Bezan v. Chrysler Motors Corp., 263 Ill. App. 3d 858, 864 (2nd Dist. 1994).

On January 9, 1985, the XYZ Corporation and nine related companies filed claims for refund for the 1983 tax year. Stip. ¶ 1. On September 6, 1989, the Department issued Notices of Deficiency, partial or entire claim denials and notifications of

overassessments with claim invitations to twelve affiliates for 1981 through 1983. Stip. ¶ 2. After settlement negotiations, taxpayer signed IL-870s on February 23, 1993 and returned them to the Department on March 3, 1993. Stip. ¶ 3. On July 27, 1993, the Department requested that The XYZ Corporation withdraw the 1983 claim for refund, dated January 9, 1985, and authorize an offset of the underpayments and overpayments set forth on the IL-870s dated February 23, 1993. The taxpayer authorized the offset by correspondence dated April 14, 1994. Stip. ¶¶ 4, 5. The Department issued a Notice and Demand letter for \$188,107 upon The XYZ Insurance Company of Illinois. In this Notice and Demand for Tax, the underpayments and overpayments for the years 1981 through 1983 were offset as authorized in the Taxpayer's letter of April 14, 1994. Stip. ¶ 6. The Notice and Demand letter reflected that interest on the overpayments was calculated through April 14, 1994. Stip. ¶ 8.

Pursuant to its authority under Ill. Rev. Stat. 1991, ch. 120, Par. 9-909(a) and 86 Ill. Adm. Code Ch. I, Sec. 100.9110(a), the Department may offset overpayments against underpayments of a person, e.g. one taxpayer. Taxpayer and its affiliates had filed on a separate unitary basis, therefore, the Department could not offset overpayments against underpayments of different persons. The Department calculated the interest on the 1982 overpayments which it could offset until March 25, 1993 or 30 days after the IL-870s Waivers of Restrictions were signed. The remaining overpayments could not be offset because the taxpayers that were entitled to the overpayments did not have corresponding underpayments. The Department did not offset these remaining overpayments until authorized to do so by taxpayer's letter of April 14, 1994. *See*, Stip. Ex. No. 7.

The issue for hearing is limited to the determination of the correct date for terminating the accrual of interest on the overpayments. The Department contends that interest accrual should be terminated on April 14, 1994, the date of letter from the taxpayer's separate unitary affiliates authorizing that offset, as this is the "date of credit" contemplated by 86 Ill. Admin. Code Sec. 100.9400(d)(1)(A). Taxpayer, however, argues that the Department has incorrectly applied this same regulation and maintains that overpayment interest accrues until a date that is no more than 30 days prior to the date of refund or credit. *See*, 86 Ill. Admin. Code Sec. 100.9400(d)(1)(A). It contends that the "date of credit" as outlined in the regulation is July 10, 1998, the date the Notice and Demand was issued, not April 14, 1994, the date of its letter, which it maintains merely authorized an offset. Taxpayer's Motion for Summary Judgment ¶ 15. It points out that the Department could have made an assessment and issued a Notice and Demand in 1994 once the IL-870s were executed. Instead, it notes the Department "took no demonstrable action to give Taxpayers the credit for the overpayments until it issued its Notice and Demand for tax on July 10, 1998." Taxpayer's Motion for Summary Judgment ¶ 16.

The relevant statute, Ill. Rev. Stat. 1991, ch. 120 ¶ 9-909(c) (now 35 ILCS 5/909(c)), provides as follows:

(c) Interest on overpayment. Under regulations prescribed by the Department, interest shall be allowed and paid at the rate of 9% per annum (or at such adjusted rate as is established under Section 6621(b) of the Internal Revenue Code)(footnote omitted) upon any overpayment in respect of the tax imposed by this Act, except that if any overpayment of tax imposed by this Act is refunded within 3 months after the last date prescribed for filing the return of such tax or within 3 months after the return was filed, whichever is later, as determined without regard to

processing by the Comptroller, no interest shall be allowed on such overpayment. For purposes of this subsection, no amount of tax, for any taxable year, shall be treated as having been paid before the date on which the tax return for such year was due under Section 505, (footnote omitted) without regard to any extension of the time for filing such return.

Section 100.9110(a) & (d) state as follows:

a) In general

The Department may credit the amount of any overpayment including interest allowed thereon against any liability for tax imposed under the IITA or any other Act administered by the Department on the person who made the overpayment, and it shall refund the balance to such person. (See Section 39e of the Civil Adm. Code of Illinois, Ill. Rev. Stat. 1989, ch. 127 par. 39(e)) [Ill. Rev. Stat. 1991, ch. 127, par. 39(e) now 20 ILCS 2502/39e]

d) Period for which interest is allowable

1) In general

Interest shall be allowed and paid from the date of overpayment to a date determined by the Director or his delegate, which shall be not more than 30 days prior to the date of any refund or credit. However, no interest shall be allowed on the amount of tax overpaid if such amount is refunded or credited within the later of three months after the last date prescribed for filing the return of such tax or within three months after the return was filed, determined without regard to processing by the Comptroller.

86 Ill. Adm. Code Ch. I, Secs. 100.9110(a) and (d)(1).⁴

Although the taxpayer asserts that it is the date of the Notice and Demand that stops the accrual of interest, the language of the statute does not mandate that the Department issue a Notice and Demand to stop interest accrual on an overpayment. A taxpayer may, by election or by authorization, credit an amount paid with respect to one

⁴ This section is currently found in 86 Ill. Adm. Code, Ch. I, Sec. 100.9400(a) and (d)(1)(A), and the only change is the addition of the words “prior to January 1, 1994.”

particular year to another year. Interest should stop accruing upon the date on which the taxpayer elects or authorizes this action, in this case April 14, 1994. The Department's actions are, therefore, in accordance with the language of the regulation which authorizes that "interest shall be allowed and paid from the date of overpayment to a date determined by the Department or his delegate, which shall not be more than 30 days prior to the date of any . . . credit." See, 86 Ill. Adm. Code Ch. I, Sec. 100.911(d)(1) [now 86 Ill. Adm. Code Ch. I, Sec. 100.9400(d)(1)(A)]. The "date of credit" could only mean April 14, 1994, the date the Department was legally entitled to shift the outstanding overpayments to cover outstanding underpayments pursuant to taxpayer's direction. Once these overpayments were credited, taxpayer's account was not "overpaid," therefore, interest could not continue to accrue.

Nor is there any prejudice to the taxpayer since the language on the IL-870 "Waiver of Restrictions" form pursuant to Ill. Rev. Stat. 1991, ch. I, Par. 10-1003(a) [now 35 ILCS 5/1003(a)] affords some protection:

If any amount of tax imposed by this Act, including tax withheld by an employer, is not paid on or before the date prescribed for payment of such tax (determined without regard to any extensions), interest on such amount at the rate of 9% per annum (or at such adjusted rate as is established under Section 6621(b) of the Internal Revenue Code) [26 USCA 6621(b)] shall be paid for the period from such date to the date of payment of such amount, except that if a waiver of restrictions under Section 907 [Paragraph 9-907 of this chapter] on the assessment and collection of such amount has been filed, and if notice and demand by the Director for the payment of such amount is not made within 30 days after the filing of such waiver, interest shall not be imposed on such amount for the period beginning immediately after such 30th day and ending with the date of the Notice and Demand.

Thus, the Department is precluded from imposing interest on any underpayment until the date it issues the Notice and Demand, since interest may only accrue on the liability for thirty days after the signing of the IL-870. In this case, the Department did, in fact, correctly calculate the interest on the underpayments through March 25, 1993, approximately 30 days after the IL-870 forms were signed on February 23, 1993, a fact not disputed by the taxpayer. *See*, Stip. Ex. Nos. 7 & 4.

Wherefore, for the reasons stated above, it is my recommendation that the Department's Motion for Summary Judgment be granted and the Taxpayer's Motion for Summary Judgment be denied.

Date: June 2, 2000

Administrative Law Judge